

FILED

THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Donovan Foster, Plaintiff

v.

UNITED STATES OF AMERICA, Defendant

Case No. 2:22-cv-08522-FWS-PVC

COMPLAINT FOR Personal Injury, Medical Negligence, Damages

Plaintiff, Donovan Foster files this Complaint against the United States of America, and alleges as follows:

PARTIES

1. Plaintiff, Donovan Foster, is an individual residing in Los Angeles, CA.
2. Defendant, United States of America, is a sovereign nation and is being sued under the Federal Tort Claims Act (FTCA).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 2671 et seq. In addition, pursuant to 38 U.S.C.S. § 7316, a plaintiff is entitled to bring forth medical malpractice and negligence claims against a "health care employee" of the VA under the Federal Tort Claims Act (FTCA), 28 U.S.C.S. § 1334, at a minimum. This provision allows a plaintiff to initiate an action against a VA health care employee for injury resulting from a negligent medical decision, and such action may proceed under the FTCA without being precluded by the Veterans' Judicial Review Act (VJRA). As the FTCA provides the exclusive means for resolving such claims, district courts possess the requisite jurisdiction to adjudicate them.

4. Venue is also proper under 28 U.S.C. §1331(e) and 28 U.S.C. §1402(b). Plaintiff resides and continues to reside in Los Angeles County, a county within the Central District of California and thus is a resident of the Central District of California.

FACTUAL ALLEGATIONS

5. Plaintiff is a veteran who served in the United States military.
6. Defendant had a duty to maintain and safeguard Plaintiff's service department records.
7. Defendant breached its duty of care towards Plaintiff by losing their service department records.
8. Defendant's breach of duty has resulted in significant harm and damages to Plaintiff.
9. Defendant admitted in writing November 25, 2019 that they lost or mislabeled the Plaintiff's service department records.

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

*[Signature]*

## CLAIMS FOR RELIEF

### 10. Count I: Violation of Due Process

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

11. Defendant has violated Plaintiff's right to due process by losing their service department records. The Defendant's loss of the Plaintiff's service department records has violated the Plaintiff's due process rights in administrative proceedings.

12. The Defendant's actions have caused harm to the Plaintiff's rights and interests. The Defendant's failure to safeguard the Plaintiff's service department records has resulted in a violation of their due process rights, and has caused the Plaintiff to suffer damages.

### 13. Count II: Breach of Contract

14. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

15. Defendant has breached its contract with Plaintiff by failing to maintain and safeguard their service department records.

16. The Defendant's loss of the Plaintiff's service department records constitutes a breach of the contract between the Plaintiff and the Defendant . The Plaintiff entered into a contract with the Defendant when they enlisted in the military, which outlined the terms and conditions of their service, including their duties, responsibilities, and entitlements.

17. The service department records are an essential part of the contract between the Plaintiff and the Defendant. These records contain important information about the Plaintiff's service, including their rank, awards, and qualifications. They also document any injuries or disabilities that the Plaintiff may have sustained during their service.

18. The Defendant's failure to maintain and safeguard the Plaintiff's service department records has resulted in harm to the Plaintiff's rights and interests, and has caused the Plaintiff to suffer damages.

### Count III: Medical Malpractice

19. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein

20. Defendant has committed medical malpractice by losing Plaintiff's service department records, which has resulted in harm.

21. The Defendant's loss of the Plaintiff's service department records constitutes medical negligence. The Plaintiff's service department records contain important information about their medical history, including any injuries or illnesses that they may have sustained during their service.

22. The loss of the Plaintiff's service department records has resulted in harm to their health and medical department. The loss of these records has made it difficult for healthcare providers to provide appropriate medical department. Plaintiff developed an injury during their service that requires ongoing medical department, the loss of their service department records made it difficult for healthcare providers to determine the appropriate course of department.

23. The Defendant's medical negligence in failing to maintain and safeguard the Plaintiff's service department records has resulted in harm, and has caused the Plaintiff to suffer damages.

Count IV: Negligent Infliction of Emotional Distress

24. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein

25. Defendant's negligence in losing Plaintiff's service department records has caused them significant emotional distress and trauma.

26. The Defendant's negligence in losing the Plaintiff's service department records has caused them significant emotional distress and trauma.

27. As a result of the Defendant's negligence, the Plaintiff has experienced emotional distress to include but not limited to anxiety, stress, and frustration. The loss of their service department records has caused them to feel a sense of betrayal and abandonment by the government that they served. The Plaintiff has also experienced a loss of trust in the government's ability to protect their interests and provide them with the benefits and entitlements that they are entitled to.

28. The emotional distress and trauma that the Plaintiff has suffered as a result of the Defendant's negligence has had a significant impact on their daily life. They have experienced difficulty sleeping, loss of appetite, and a general sense of hopelessness and despair. The Plaintiff has also experienced a loss of enjoyment in activities that they previously found pleasurable.

29. Due to the Defendant's negligence in losing the Plaintiff's service department records, the Plaintiff has suffered significant emotional distress and trauma, resulting in harm and damages for Negligent Infliction of Emotional Distress.

Count V: Fraud

30. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein

31. Defendant has committed fraud by misrepresenting that Plaintiff's service department records were being properly maintained and safeguarded.

32. The Defendant has committed fraud by misrepresenting that the Plaintiff's service department records were being properly maintained and safeguarded. The Defendant had a duty to properly maintain and safeguard the Plaintiff's service department records, and they made false representations to the Plaintiff that they were doing so.

33. The Plaintiff relied on the Defendant's representations and entrusted their service department records to the Defendant. The Defendant's false representations have caused the Plaintiff harm and the Plaintiff suffered damages as a result of Defendants fraud.

Count VI: Violation of The Privacy Act of 1974

34. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein

35. Defendant has violated Plaintiff's privacy rights by losing their service department records, which contain sensitive and confidential medical information.

36. The Defendant has violated the Plaintiff's privacy rights by losing their service department records, which contain sensitive and confidential medical information. The Plaintiff had a reasonable expectation of privacy in their medical information, and the Defendant had a duty to protect the confidentiality of this information.

37. The Defendant's failure to properly maintain and safeguard the Plaintiff's service department records has caused the Plaintiff harm. The loss of these records has compromised the confidentiality of the Plaintiff's medical information and has exposed them to potential harm, including identity theft and discrimination. In addition the Plaintiff has suffered damages as a result of the Defendant's violation of their privacy rights.

#### Count VII: Breach of Fiduciary Duty

38. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein

39. Defendant has breached its fiduciary duty towards Plaintiff by failing to properly maintain and safeguard their service department records.

40. The Defendant had a fiduciary duty to act in the best interests of the Plaintiff and to protect their service department records.

41. The Defendant's failure to properly maintain and safeguard the Plaintiff's service department records has caused the Plaintiff harm.

The Plaintiff has suffered damages as a result of the Defendant's breach of fiduciary duty. The Plaintiff has suffered financial harm as a result of the loss of Plaintiff's service department records.

42. The Defendant has breached its fiduciary duty towards the Plaintiff by failing to properly maintain and safeguard their service department records. The Defendant had a fiduciary duty to act in the best interests of the Plaintiff and to protect their service department records.

43. The Defendant's failure to properly maintain and safeguard the Plaintiff's service department records has caused the Plaintiff harm and the Plaintiff has suffered damages as a result of the Defendant's breach of fiduciary duty.

#### Count VIII: Negligent Hiring or Training

45. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein

46. Defendant's negligence in hiring or training its employees has resulted in the loss of Plaintiff's service department records.

47. The Defendant's negligence in hiring or training its employees has resulted in the loss of the Plaintiff's service department records. The Defendant had a duty to exercise reasonable care in hiring and training its employees to ensure that they were competent and capable of properly maintaining and safeguarding the Plaintiff's service department records.

48. The Defendant's failure to exercise reasonable care in hiring or training its employees has caused the Plaintiff harm and the Plaintiff has suffered damages as a result of the Defendant's negligence.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Hold Defendant liable for the harm and damages caused to Plaintiff;
2. Award appropriate compensation to Plaintiff;
3. Award Plaintiff their costs and expenses incurred in this action; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Donovan Foster  
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Marina Del Rey, CA 90048  
fostermailbox@gmail.com

Attorney for Plaintiff

Dated: [Insert Date]